

MASS. ED21.2: H35/998



312066 0270 1407 0

Massachusetts



Department of  
Education

# Hearing Rules for Special Education Appeals

GOVERNMENT DOCUMENTS  
COLLECTION

OCT 28 1999

University of Massachusetts  
Depository Copy

July, 1998

Dear Friends,

I am pleased to provide you with this revised set of Special Education Appeals Hearing Rules. Although technical in nature due to the legal requirements associated with a hearing process, these Rules have a new, easier to use format that incorporates both substantive changes and clearer language than ever before.

We are committed to provide an impartial mechanism to resolve special education disputes as fairly and efficiently as possible. To that end, I hope these Hearing Rules will provide you with useful information in the event a hearing is required.

Sincerely,

David P. Driscoll (Interim)  
Commissioner of Education

# CONTENTS

SCOPE OF RULES .....	1
----------------------	---

## HOW TO BEGIN AN ADMINISTRATIVE DUE PROCESS HEARING

<u>Rule 1: Hearing Request</u> .....	2
A. Who May File	
B. Hearing Request Content	
C. Notice to Opposing Party	
D. Representation	
E. Intervention	
F. Joinder	

## HOW A HEARING DATE IS SCHEDULED

<u>Rule 2: Hearing Schedule</u> .....	3
A. Hearing Date	
B. Emergency Hearing	

## HOW TO REQUEST A POSTPONEMENT

<u>Rule 3: Postponement</u> .....	4
A. By Agreement of Both Parties	
B. At the Request of One Party	
C. Notice of Request	

## THE PRE-HEARING CONFERENCE

<u>Rule 4: Pre-Hearing Conferences</u> .....	4
A. Hearing Request Prerequisite	
B. Both Parties Requesting	
C. One or Neither Party Requesting	

<u>Rule 5: Discovery</u> .....	5
A. Defined	
B. Objections to Discovery	
C. Exchange by Agreement	
D. Formal Requests	
1. Requests for Documents	
2. Interrogatories	
3. Depositions	

<u>Rule 6: Motions</u> .....	6
A. Defined	
B. Filing a Motion	
C. Notice to Other Party	
D. Hearing & Ruling on Motion	
E. Evidence Relating to Motion	

<u>Rule 7: Subpoenas</u> .....	7
A. Defined	
B. Issuance	
C. Contesting a Subpoena	
D. Enforcement	
<u>Rule 8: Exhibits</u> .....	7
A. Five Day Rule	
B. Exhibit Preparation	

## HOW A HEARING IS CONDUCTED

<u>Rule 9: Conduct of Hearings</u> .....	8
A. Generally	
B. Hearing Officer Duties & Powers	
C. Evidence	
D. Burden of Proof	
E. Close of Hearing	
F. Failure to Appear	
<u>Rule 10: Rights of Parties</u> .....	10
A. Rights of All Parties	
B. Parent Rights	
<u>Rule 11: Decision Without a Hearing</u> .....	10
<u>Rule 12: Decision &amp; Implementation</u> .....	11
A. Decision	
B. Finality	
C. Immediate Implementation	
<u>Rule 13: Rights of Appeal; Stay; Placement Pending</u> .....	11
A. Rights of Appeal	
B. Stay of Decision	
C. Placement of Child During Appeal	
<u>Rule 14: Compliance with Decision</u> .....	12
<u>Rule 15: Record</u> .....	12

## DISMISSAL/CASE CLOSURE

<u>Rule 16: Dismissal &amp; Closure of Cases</u> .....	12
A. Dismissal With & Without Prejudice Defined	
B. By Motion/Request of Party	
C. By Hearing Officer	
D. Inactive Cases	

## Scope of Rules

*The Department of Education created the Office of Special Education Appeals to ensure due process rights of children, parents, and public schools when disputes arise concerning a child's educational program which cannot be resolved locally first. Special Education Appeals has jurisdiction over disputes between children and students, parents or guardians, and local and state educational agencies involving any matter concerning the provision of a free appropriate public education to a child with special needs.*

*Special Education Appeals has the authority to resolve educational disputes pursuant to Massachusetts state law M.G.L. c.15 and 71B (popularly known as Chapter 766) and their implementing regulations, in particular 603 CMR 28.00, Chapter 4. Special Education Appeals has jurisdiction to resolve educational disputes under federal law as well as in accordance with 20 U.S.C. 1401 et seq. (P.L. 94-142) and 29 U.S.C. 794 (Section 504 of the Rehabilitation Act of 1973) and the regulations promulgated thereunder: 34 CFR 300 and 34 CFR 104.*

*These hearing rules are regulated by Chapter 766 Regulations, Federal Due Process Procedures and Massachusetts Administrative Procedure Act, M.G.L. C.30A. Unless modified explicitly by these Rules, Special Education Appeals' hearing are conducted under the Formal Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 et seq. These provisions require Special Education Appeals to conduct fair and impartial hearings and to render written decisions based upon findings of fact and supported by substantial evidence.*

---

*These Rules replace and supersede those set out in the Bureau of Special Education Appeals Guidelines, issued in 1996.*

---



## **A. Who May File a Hearing Request.**

A hearing before Special Education Appeals may be requested by:

1. The student, if age 18 or over;
2. The parent(s), legal guardian, or Department of Education Surrogate Parent;
3. The Special Education Director of the responsible school district or state educational agency; or
4. An attorney or advocate for any of the above.

## **B. Hearing Request Content.**

To begin the hearing process, a written hearing request must be filed with Special Education Appeals. The hearing request must contain the following information:

1. Name and address of student;
2. Name, addresses, and telephone numbers of both parents or legal guardian, if known;
3. Name of responsible school district or state educational agency;
4. If applicable, the name, address, phone number, and fax number of the attorney or advocate representing the party who is requesting a hearing;
5. A statement describing what issues are being appealed; and
6. A statement explaining what outcome is being sought through the Appeals' process.

*The Hearing Request must be signed and dated by the person who is requesting the hearing.*

## **C. Notice of the Request to the Opposing Party.**

At the time the Request is filed, the person who is requesting the hearing must mail a copy of the Hearing Request to the opposing party.

## **D. Representation - Attorney or Advocate Notice to Special Education Appeals.**

1. Representation. Individuals may appear on their own behalf and present their case without attorney or advocate assistance if desired. A school district or state educational agency may designate an individual to act on its behalf. Any party has the right to be accompanied, represented, and advised by an attorney or advocate. The filing of a Hearing Request on behalf of a party by an attorney or advocate shall mean that the attorney or advocate represents that party.
2. Withdrawal From Representation. An attorney or advocate may withdraw from a case by filing written notice of withdrawal, together with a statement stating that notice of the withdrawal has been provided to the client and all other parties.

## **E. Intervention.**

Upon written request, a Hearing Officer may allow or direct any person who may be substantially and specifically affected by the proceeding to intervene or participate in the entire proceeding or any part of it.

## **F. Joinder.**

Upon written request of a party, a Hearing Officer may allow for the joinder of a person in cases where complete relief cannot be granted among those who are already parties, or the person being joined has an interest relating to the subject matter of the case and is so situated that the case cannot be disposed of in their absence. Factors in determination of joinder are: the risks of prejudice to the present parties in the absence of the proposed party; the range of alternatives for fashioning relief; the inadequacy of a judgment entered in the proposed party's absence; and the existence of an alternative forum to resolve the issues.

# **How to Begin An Administrative Due Process Hearing**

## **RULE 1: Hearing Request**

# How a Hearing Date is Scheduled

## RULE 2: Hearing Schedule

### A. Hearing Date.

Within five (5) days of receipt of a written request for the hearing, Special Education Appeals will assign a Hearing Officer and will schedule a hearing within twenty (20) days after receipt of the written hearing request. Special Education Appeals will send to the parties a Notice containing the scheduled hearing date and the name of the Hearing Officer assigned to the case. All hearings shall be held at Special Education Appeals hearing rooms unless the Hearing Officer orders otherwise.

### B. Expedited Hearings.

When circumstances warrant it, Special Education Appeals may grant expedited relief.

1. *Applicability.* Expedited hearing requests are applicable only in the following situations:

- a. Student Discipline. In matters related to the determination of an appropriate educational program for an eligible special education student who has been subjected to disciplinary procedures, an expedited hearing may be scheduled:

When a parent disagrees with a school district's determination that the child's behavior was not a manifestation of the child's disability, or any decision regarding placement in the discipline context.

When a school district maintains that it is dangerous for a child to remain in his/her original placement (the placement prior to removal to an interim alternative educational setting) during pendency of due process proceedings.

- b. Other. When either parents or school districts believe that: 1) the health or safety of the student or other students would be endangered by delay; 2) the special education services the student is currently receiving are sufficiently inadequate that harm to the student is likely; or 3) the student is without an available educational program or the student's educational program will be terminated or interrupted.
2. *Form of Request.* Requests for expedited hearings must be in writing and must conform to the requirements of Rule 1.
  3. *Expedited Hearing Schedule.* A hearing on an expedited request will be held no later than ten (10) days after the request is received by Special Education Appeals. However, the Hearing Officer may grant postponements at the request of either party for due cause. If the parties and the Hearing Officer agree, then expedited hearings may be decided on written material alone.
  4. *Additional Requirements.* When a party is seeking an immediate Order as part of an expedited hearing request, the request must be accompanied by an Affidavit (a sworn statement indicating the truth of the assertions) stating the issue, the relief requested, and the reasons why such an immediate Order is necessary. Special Education Appeals may also require parties to submit additional Affidavits, Proposed Findings, or Proposed Orders as part of any expedited hearing request.

### **A. By Agreement of Both Parties.**

When both parties agree to a postponement of any date in the hearing process, the parties must file a written notice with the Hearing Officer. The written notice must contain a reason for the postponement as well as proposed alternate dates. The Hearing Officer must issue a new hearing date.

### **B. At the Request of One Party.**

When one party seeks a postponement of any date in the hearing process, the party must file a written request with the Hearing Officer who may allow or deny the request. At the time of the request, a copy must be sent to the opposing party. The written request must contain a reason for the postponement as well as proposed alternate dates. If the Hearing Officer allows the postponement, the Hearing Officer must also issue a new hearing date.

### **C. Notice of Request for Postponement.**

Except in extraordinary circumstances, parties seeking a postponement must make such a written request to the Hearing Officer at least five (5) business days before the hearing date.

## **How to Request a Postpone- ment**

### **RULE 3: *Postponement***

### **A. Hearing Request Prerequisite.**

Pre-Hearing Conferences may only be conducted after a Request for Hearing has been filed with Special Education Appeals.

### **B. When Both Parties Request a Pre-Hearing Conference.**

When both parties request a Pre-Hearing Conference, then a Hearing Officer shall conduct such a Conference.

### **C. When One Party or Neither Party Requests a Pre-Hearing Conference.**

When one party or neither party requests a pre-hearing conference, a Hearing Officer shall determine whether a pre-hearing conference is necessary.

### **D. Purpose of a Pre-Hearing Conference.**

The Pre-hearing Conference shall simplify or clarify the issues as well as review the possibility of settlement of the case. At the Pre-Hearing Conference, the parties shall be prepared to discuss their respective positions and what each party expects Special Education Appeals to order at the conclusion of a hearing. Parties must appear at the Pre-Hearing Conference with full authority to settle a case or ability to access authorization to settle the case at the time of the Pre-Hearing Conference.

### **E. Failure to Appear at a Pre-Hearing Conference.**

If a party fails to appear for a Pre-Hearing Conference, a Hearing Officer may proceed with the conference and may also entertain a dismissal or default against the offending party.

### **F. Telephone Conference.**

At the discretion of a Hearing Officer, a Pre-Hearing Conference may be conducted by telephone.

## **The Pre-Hearing Conference**

### **RULE 4. *Pre-Hearing Conferences.***



## Procedures That May Occur Before Or During A Hearing

### **RULE 5.** *Discovery Requests for Information Prior to or During the Hearing Process.*

#### **A. Defined:**

The term "discovery" refers to requests for and exchanges of information after a party files a hearing request. Discovery may occur in the form of written questions (called interrogatories); written requests for records (called production of documents); or testimony under oath (called a deposition).

#### **B. Objections/Protective Orders.**

The party upon whom a request for discovery is served may within ten (10) days of service of the request, file with the Hearing Officer objections to the request or move for a protective order. Disputes regarding discovery shall be resolved whenever possible by conference call. Protective orders may be issued to protect a party from undue burden, expense, delay, or as otherwise deemed appropriate by the Hearing Officer. Orders of the Hearing Officer may include limitations on the scope, method, time and place for discovery or provisions for protecting confidential information or documents.

#### **C. Exchange of Information by Agreement.**

The parties are encouraged to exchange information cooperatively and by agreement prior to the hearing. The parents are entitled to request copies of the student's school records.

#### **D. Formal Requests for Information and Specific Types of Requests for Information.**

Formal requests for information may be made at any time after a request for hearing is filed. The party upon whom the request is delivered shall respond within thirty (30) days unless a shorter or longer period of time is established by the Hearing Officer.

1. Requests for Documents. Any party may request any other party to produce or make available for inspection or copying any documents or tangible things, not privileged, not supplied previously, and which are in the possession, custody, or control of the party upon whom the request is made.
2. Interrogatories. A party must request permission from a Hearing Officer to serve written interrogatories on any other party for the purpose of discovering relevant, not privileged, information not supplied previously through a voluntary exchange of information. No party, without Hearing Officer approval, shall serve more than twenty-five (25) interrogatories. For purposes of determining the number of interrogatories, subparts of a basic interrogatory which are logical extensions of the basic interrogatory and seek only to obtain specified additional particularized information with respect to the basic interrogatory shall not be counted separately from the basic interrogatory. Each interrogatory shall be separately and fully answered under the penalties of perjury unless it is objected to, in which event, the reasons for the objection must be stated in lieu of an answer.
3. Depositions. In order to take the testimony of any witness by deposition, a party must file a written motion seeking approval from the Hearing Officer.
  - a. Time & Content. There shall be at least ten days notice to the parties of the motion to take a deposition. A motion requesting a deposition shall state the name and address of the witness to be deposed, the subject matter concerning which the witness is expected to testify, the time and place of taking the deposition, the name and address of the person before whom the deposition is desired, and the reason why such deposition should be taken.



b. Authorization. The Hearing Officer shall allow the motion only upon a showing that the parties have agreed to submit the deposition in lieu of testimony by the witness or the witness to be deposed cannot appear before the Hearing Officer without substantial hardship, and that the testimony being sought is significant, not privileged and not discoverable by an alternate means.

c. Scope and Conduct of the Deposition. Depositions shall be taken orally before a person having power to administer oaths. Every witness testifying upon deposition shall be duly sworn, and the adverse party/parties shall have the right to cross-examine. Objections to questions must set out the grounds relied upon. The testimony shall be reduced to writing and shall, unless waived, be signed by the witness, and certified by the officer before whom the deposition is taken. After the deposition has been subscribed and certified, it shall be forwarded to the Hearing Officer. Subject to appropriate rulings on objections, and the parties' agreement regarding its use, the deposition shall be received in evidence as if the testimony contained therein had been given by the witness in the proceeding.

#### **A. Motion Defined.**

A party may request that a Hearing Officer issue an order or take any action consistent with relevant statutes or regulations. Such a request shall be called a Motion.

#### **B. Filing a Motion.**

After a party files a hearing request, motions may be filed in writing with the Hearing Officer. Each Motion shall set forth the reasons for the desired order or action and shall also state whether a hearing on the Motion is requested.

#### **C. Notice of the Motion to the Other Party.**

Written motions must be served on all parties and the Hearing Officer simultaneously. Within seven (7) days after a written motion is filed with the Hearing Officer, any party may file written objections to the allowance of the motion and may request a hearing on the motion.

#### **D. Hearings & Rulings on a Motion.**

If a hearing on a motion is warranted, a Hearing Officer shall give all parties at least three (3) days notice of the time and place for hearing. A Hearing Officer may rule on a motion without holding a hearing if: 1) delay would seriously injure a party; 2) if testimony or oral argument would not advance the Hearing Officer's understanding of the issues involved; or 3) if a Ruling without a hearing would best serve the public interest.

#### **E. Evidence Relating to Motions.**

In support of, or opposition to, a Motion, a party may offer only evidence relevant to the particular motion. This evidence may consist of facts which

## **RULE 6.** *Motions Requests for Rulings on Hearing Issues*

## **RULE 7.**

### ***Subpoenas***

#### **A. Subpoena Defined:**

A written command to appear at a certain time and place to give testimony in the case in dispute. A subpoena may also require the production of documents.

#### **B. Issuance.**

Upon the request of a party, or on its own motion, Special Education Appeals may issue subpoenas to require a person to appear and testify and to produce documents at the hearing. A request that Special Education Appeals issue a subpoena shall be made in writing and received by Special Education Appeals at least ten (10) days prior to the hearing; shall specify the name and address of the person to be subpoenaed; and shall describe any documents to be produced. Subpoenas issued independent of Special Education Appeals shall be governed by the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.00 et seq.

#### **C. When a Person Contests a Subpoena.**

A person receiving a subpoena may request that a Hearing Officer vacate or modify the subpoena. A Hearing Officer may so do upon a finding that the testimony or documents sought are not relevant to any matter in question or are privileged, or that the time specified for compliance or the breadth of the material sought imposes an undue burden on the person subpoenaed.

#### **D. Enforcement.**

When a Subpoenaed Individual Fails to Comply with a Subpoena. If any person fails to comply with a properly issued subpoena, the party requesting the issuance of the subpoena may petition the Superior Court for an order requiring compliance with the subpoena's terms.

## **RULE 8.**

### ***Exhibits; Documents Presented at the Hearing; Witness List***

#### **A. Five Day Rule.**

Copies of all documents to be introduced and a list of the witnesses to be called at the hearing must be received by the opposing parties and the Hearing Officer at least five days prior to the hearing.

#### **B. Exhibit Preparation.**

All exhibits shall be numbered in the upper right hand corner, divided by tabs, and submitted to Special Education Appeals along with a numbered index.

## How A Hearing Is Conducted

### **RULE 9:** *Conduct of Hearings*

#### **A. Generally.**

Hearings shall be scheduled, to the extent possible, at a time and place convenient to the parties. Hearings shall be as informal as is reasonable and appropriate under the circumstances. The Hearing Officer has the authority and obligation to ensure that appropriate standards of conduct are observed and that the hearing is conducted in a fair and orderly manner. The hearing is closed to the public and all information shall remain confidential unless the parents request otherwise.

#### **B. Hearing Officer Duties and Powers.**

The Hearing Officer shall have the duty to conduct a fair hearing; to ensure that the rights of all parties are protected; to define issues; to receive and consider all relevant and reliable evidence; to ensure an orderly presentation of the evidence and issues; to ensure a record is made of the proceedings; and to reach a fair, independent and impartial decision based on the issues and evidence presented at the hearing and in accordance with the law. In furtherance of these duties, the Hearing Officer may:

1. Administer the oath or affirmation to anyone who will testify at the hearing;
2. Assist all those present in making a full and free statement of the facts in order to bring out all the information necessary to decide the issues involved and to ascertain the rights of the parties;
3. Ensure that all parties have a full opportunity to present their claims orally, or in writing, and to secure witnesses and evidence to establish their claims;
4. Receive, rule on, exclude, or limit evidence;
5. Introduce into the record any regulations, statutes, memoranda, or other materials relevant to the issues at the hearing;
6. Change the date, time or place of the hearing sua sponte or at the request of the party, upon due notice to the parties; and continue the hearing to a subsequent date to permit either party to produce additional evidence, witnesses, and other information;
7. Request a statement of the issues and define the issues;
8. Regulate the presentation of the evidence and the participation of the parties for the purpose of ensuring an adequate and comprehensible record of the proceedings;
9. Issue subpoenas sua sponte or upon request of any party to secure the presentation of evidence or testimony;
10. Examine witnesses and ensure that relevant evidence is secured and introduced;
11. Rule on any requests or motions that may be made during the course of Special Education Appeals proceedings;
12. Order additional evaluations at public expense;
13. Order written briefs to be submitted by the parties, establish the issues to be addressed by the briefs and set the deadline for their submission;
14. Reconvene the hearing for any purpose at any time prior to the issuance of a decision or pursuant to a post-hearing motion;
15. Censure, reprimand, or otherwise ensure that all participants conduct themselves in an appropriate manner.



### **C. Evidence.**

The Hearing Officer shall not be bound by the rules of evidence applicable to courts, but shall observe the rules of privilege recognized by law. Evidence shall be admitted only if it is the kind of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs.

1. Documents. The parties may offer as evidence written documents that they have exchanged prior to the hearing in accordance with these procedures. The Hearing Officer may permit or request the introduction of additional documentary evidence where no prejudice would result to either party.
2. Oral Testimony. Oral testimony shall be given under oath or affirmation, subject to the pains and penalties of perjury. Witnesses shall be available for examination and cross-examination.
3. Regulations and Statutes. Regulations and statutes may be put into evidence by reference to the citation or by submitting a copy of the pertinent regulation or statute.
4. Stipulations. Stipulations of fact, or stipulations as to the testimony that would have been given by an absent witness, may be used as evidence at the hearing. The Hearing Officer may require evidence in addition to the stipulations offered by the parties.
5. Administrative Notice. The Hearing Officer may take administrative notice of any fact of which judicial notice could be taken, and in addition may take administrative notice of statutes, regulations, and general, technical or scientific facts within the specialized knowledge of the Hearing Officer. Parties shall be so notified of the material so noticed and they shall be afforded an opportunity to contest the substance or materiality of the facts noticed. Facts officially notified shall be included and indicated as such in the record.
6. Additional Evidence. The Hearing Officer may require any party to submit additional evidence on any relevant matter.

### **D. Burden of Proof.**

There is no formal burden of proof. In reaching a decision, the Hearing Officer will assess the weight, credibility, and probative value of the evidence admitted into the record. Hearing Officers may use their experience, technical competence, and specialized knowledge in evaluating the evidence. The Hearing Officer's decision will be based upon a preponderance of the evidence presented.

### **E. Close of the Hearing.**

At the conclusion of all testimony, the Hearing Officer has the discretion to permit or require the parties to make oral or written closing arguments. The hearing is formally closed when any additional documents permitted by the Hearing Officer are added to the record, or when written closing arguments, if any, are received by the Hearing Officer, on or upon the date such documents or arguments are due, whichever comes first. A decision will be issued within twenty-five (25) days of the close of the hearing.

### **F. Failure to Appear.**

If a party fails to appear at the scheduled hearing, the Hearing Officer may take evidence and issue such orders as may be necessary including, but not limited to, ordering an educational placement for the child or defaulting the absent party.

## **A. Rights of All Parties.**

Under the provisions governing Special Education Appeals hearings, all parties have the right to:

1. To be accompanied and advised by legal counsel and advocates;
2. To present evidence, to confront, cross-examine, and, pursuant to a subpoena issued by Special Education Appeals, to compel the attendance of witnesses;
3. To prohibit the introduction of any evidence at the hearing that has not been disclosed to the parties at least five (5) days before the hearing;
4. To obtain an electronic verbatim record of the hearing upon written request to Special Education Appeals after the close of the hearing. The record may only be used in a manner consistent with these regulations and otherwise shall be kept confidential except with the parent's consent;
5. To receive a written decision setting forth the Hearing Officer's findings of fact and order, within forty-five (45) days of the receipt of a request for a hearing, provided that the Hearing Officer may grant extensions of time at the request of either party; and
6. To receive, upon request to Special Education Appeals, a list of its impartial Hearing Officers with their qualifications.

## **B. Parent Rights.**

Under the provisions governing Special Education Appeals hearings, parents have the following additional right to:

1. To have the child, who is the subject of the hearing, present at the hearing;
2. To open the hearing to the public; otherwise the hearing shall not be open to the public;
3. Pursuant to the Massachusetts Student Records regulations, to inspect and to receive a copy of all student records pertaining to the child, including, but not limited to, the written record and clinical history of the evaluation, and any other school records and papers related to the identification, evaluation, placement or provision of a free appropriate public education to the child.
4. To introduce an independent evaluation as evidence in the hearing, whether the independent evaluation was conducted at parental or school committee expense.
5. To receive reasonable attorneys' fees, pursuant to the Individuals with Disabilities Education Act, if the parents prevail in the hearing.

## **A. A party may request a decision without a hearing.**

All parties and the Hearing Officer must agree to a decision based solely on written material. The decision will have the same force and effect as any other Special Education Appeals decision.

## **RULE 10.** ***Rights of Parties.***

## **Hearing Decision Information**

## **RULE 11.** ***Decision Without A Hearing.***

**RULE 12.**  
***Decision and  
Implementation  
of Decision.***

**A. Decision.**

The written findings of fact and decision of the Hearing Officer along with the notification of the procedures to be followed with respect to appeal and enforcement of the decision shall be sent to the parents and their representatives, if any; to the representatives of the child if the child has representation separate from the parents; and to the school committee and its legal representatives, if any.

**B. Finality of Decision.**

The decision of Special Education Appeals is final and is not subject to further Agency review. Motions to reconsider or to re-open a Special Education Appeals are not permitted.

**C. Immediate Implementation.**

Except as provided below in Rule 13, the decision shall be implemented immediately.

**RULE 13.**  
***Rights of  
Appeal;  
Stay of  
Decision;  
Placement of  
Child During  
Appeal***

**A. Rights of Appeal.**

Any party aggrieved by the decision may file a complaint in the Superior Court of competent jurisdiction or in federal District Court for review of the decision. Under the provisions of Massachusetts General Laws Chapter 30A, Section 14(1), the complaint shall be filed within thirty (30) days of receipt of the final decision.

**B. Stay of Decision.**

A party seeking to stay the decision shall seek a stay from the court having jurisdiction over the party's appeal.

**C. Placement of Child During Appeal.**

Unless the parents and the school committee agree otherwise, during the pendency of any judicial appeal of the decision, the child shall remain in the then current educational placement, unless the child's parents are seeking initial placement in the public school, in which case the child shall be placed in the public school program. Where the decision orders the school committee to place the child in a new placement, and the parents agree with that order, the school committee shall immediately implement the placement ordered by Special Education Appeals.

The parents have the right to reject the decision of Special Education Appeals and to request placement of their child in the regular public school program. If such placement is requested, the school committee shall provide the child with the regular education program, unless the school committee determines that such placement would endanger the health and safety of such child, substantially disrupt the program for other children, or deny the child a free appropriate public education, in which case the school committee shall seek enforcement of the decision in state or federal court. The court shall have the authority upon such showing to order the child placed in an appropriate educational placement.



**A. A party contending that a decision of Special Education Appeals is not being implemented may file a motion requesting Special Education Appeals to order compliance with the decision.**

The motion shall set out the specific areas of alleged non-compliance. The Hearing Officer may convene a hearing at which the scope of inquiry will be limited to facts bearing on the issue of compliance, facts of such a nature to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the Hearing Officer may fashion appropriate relief and refer the matter to the Department of Education's legal office for enforcement.

**A. Record of the Hearing.**

Special Education Appeals will provide an electronic verbatim record of the hearing to any party, free of charge, upon receipt of a written request. Pursuant to M.G.L. c.30A, §11(6), §14(4), an appealing party seeking a certified written transcription of the entire proceedings, must arrange for the transcription, or portion thereof, by a certified court reporter, at his/her own expense. Transcripts prepared by the party must then be submitted to Special Education Appeals with appropriate court reporter certification for final review and certification. A party unduly burdened by the cost of preparation of a written transcript of the sound recordings may petition Special Education Appeals for relief.

**A. Dismissal With and Without Prejudice Defined.**

Dismissal with prejudice means that the issues raised in the hearing request are closed and cannot be reopened in subsequent requests for hearing. Dismissal without prejudice means that the same issues may be raised at a later date by the filing of a new request for hearing.

**B. By Motion/Request of the Parties.**

Any party may file a Motion or Request to dismiss a case for failure: 1) to prosecute or proceed with the case by the other party; 2) to follow or comply with these rules or with any Hearing Officer Order; 3) to state a claim upon which relief can be granted; or 4) to sustain its case after presentation of evidence. The Hearing Officer may allow a Motion or Request to Dismiss with or without prejudice.

**C. By Order of the Hearing Officer.**

When the party who requested the hearing fails to respond to notices or correspondence, file documents required by these rules, comply with orders, or otherwise indicates an intent not to proceed with the hearing request, the Hearing Officer may issue an order requiring that party to show cause why the appeal should not be dismissed for lack of prosecution or a failure to proceed. If that party fails to show such cause within thirty (30) days, the appeal may be dismissed with or without prejudice.

**D. Inactive Cases.**

A case that has not been scheduled, withdrawn, or requested to be scheduled by either party for a period of one year from the original request for hearing, shall be dismissed with prejudice. A dismissal under this section shall be a final action of Special Education Appeals.

**RULE 14.**  
*Compliance  
With  
Decision.*

**RULE 15.**  
*Record.*

**Dismissal/  
Case  
Closure**

**RULE 16.**  
*Dismissal and  
Closure of  
Cases.*

**Massachusetts**



**Department of  
Education**

---

**350 Main Street  
Malden, Massachusetts  
02148**

**(781) 388-3300  
[www.doe.mass.edu](http://www.doe.mass.edu)**